

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SEAN CARLOS BURKE
Plaintiff,

vs.

ACCO BRANDS, et al.
Defendants.

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C.A. No. 05-371Erie
District Judge McLaughlin
Magistrate Judge Baxter

MEMORANDUM ORDER

Procedural History

On December 20, 2005, this case was removed by Defendant ACCO Brands from the Court of Common Pleas of Fayette County, Pennsylvania, to this federal court based on the federal question jurisdiction pertaining to Defendants Scire, Beard and Wilson.

Plaintiff is an inmate acting *pro se*. Originally named as Defendants were: ACCO Brands, Inc.; Boise Cascade Corporation (which has been later identified as Office Max, Inc.); John Doe Manufacturer; and Carol Scire, Jeffrey Beard, and Superintendent Harry Wilson, all employees of the Pennsylvania Department of Corrections and hereafter referred to as the “Department of Corrections Defendants.” Plaintiff alleges that he suffered injuries to his left hand caused by a stapler manufactured and distributed by ACCO Brands. Plaintiff claims that the stapler is defective, prone to malfunction and does not contain warning stickers. In addition to the tort claims against ACCO Brands, Boise Cascade, and John Doe Manufacturer (hereafter, “the manufacturer Defendants”), Plaintiff asserts federal constitutional claims against the Department of Corrections Defendants Beard, Scire and Wilson.

By motion dated January 19, 2006, Defendant ACCO Brands moved to dismiss the case against it. By Report and Recommendation dated July 21, 2006, this Court recommended that the motion to dismiss be denied and that Plaintiff be directed to file an amended complaint as to his tort claims against Defendants ACCO Brands, Boise Cascade Corp., and John Doe Manufacturer. Document # 27. On August 9, 2006, the undersigned adopted the Report and Recommendation as the opinion of the court and issued a separate order directing Plaintiff to file

an amended complaint only as to his tort claims against Defendants ACCO Brands, Boise Cascade and John Doe Manufacturer. Document # 29.

Later, the Commonwealth Defendants filed a motion to dismiss the original complaint and a motion to dismiss the amended complaint. By Report and Recommendation dated January 17, 2006, Magistrate Judge Baxter recommended that the motions to dismiss by the Commonwealth Defendants be granted and that the remainder of this action should be remanded to the Court of Common Pleas of Fayette County, Pennsylvania. Document # 45.

Neither the Plaintiff nor the Commonwealth Defendants filed Objections to the Report and Recommendation. However, on January 26, 2007, the manufacturer Defendants filed a "Motion for Reconsideration of Magistrate Judge's Recommendation to Remand." Document # 46. The manufacturer Defendants moved for reconsideration solely as to the recommendation to remand this case to the state court. Magistrate Judge Baxter granted the motion for reconsideration, ordered additional briefing and issued a separate Report and Recommendation [Document # 54] solely on the issue of remand.

AND NOW, this 7th day of March, 2007;

Following a *de novo* review of the record in this case, IT IS HEREBY ORDERED that the Report and Recommendation by Magistrate Judge Baxter [Document # 45] is adopted in part. Specifically, the recommendation that the motions to dismiss filed by the Commonwealth Defendants is adopted as the opinion of this Court. The issue of remand has been addressed in a separate Report and Recommendation and will be dealt with by this Court at the appropriate time.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge